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Counsel for Plaintiff Axxess Global Sciences, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

AXCESS GLOBAL SCIENCES, LLC, Plaintiff, vs. VIRO SUPPLEMENT LABS LLC, and CHAD DANIEL DEVORE, Defendants.	Case No: 2:23-cv-480 COMPLAINT FOR PATENT INFRINGEMENT, TRADEMARK INFRINGEMENT, AND FALSE ADVERTISING JURY DEMANDED Magistrate Judge Daphne A. Oberg
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Plaintiff Axxess Global Sciences, LLC (“AGS” or “Plaintiff”) complains and alleges the following against Defendants Viro Supplement Labs LLC (“Viro”) and Chad Daniel DeVore (“DeVore”) (collectively, “Defendants”).

NATURE OF THE CLAIMS

1. This is an action for trademark infringement and federal false advertising under Sections 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114(a)-(b) and 1125(a)-(c) and patent infringement under 35 U.S.C. §§ 1, *et seq.*

2. Plaintiff is the owner of the registered trademark, goBHB® (Reg. No. 5261845). *See Exhibit A.* The goBHB® trademark is applied to products sold by the Plaintiff and its licensees that contain Plaintiff's patented goBHB®-branded ingredients.

3. Plaintiff is also the owner of U.S. Pat. Nos. 11,241,403 (the "'403 Patent") and 11,020,362 (the "'362 Patent"). *See Exhibits B and C.* The Asserted Patents include claims for unique formulations of the health supplement Beta-Hydroxybutyrate ("BHB").

4. Defendants make, use, advertise, offer for sale, sell and/or import a line of products, including KetoScorch and KetoScorch PM (collectively "Accused Products"), that uses Plaintiff's trademarks and patented formulas without authorization:



www.ketoscorch.com

www.ketoscorch.com/ketoscorch-pm

www.dietpillsexposed.com/ketoscorch

5. Defendants' advertising and product information falsely state that the Accused Products contain goBHB®-branded ingredients. Defendants do not have authorization from Plaintiff to use the goBHB® mark on its products or advertising.

6. According to Defendant, KetoScorch contains a “GoBHB® Proprietary Blend” with (1) “Magnesium Beta Hydroxybutyrate (as goBHB),” (2) “Calcium Beta Hydroxybutyrate (as goBHB),” and (3) “Sodium Beta Hydroxybutyrate (as goBHB).” *See* www.dietpillsexposed.com/ketoscorch. And KetoScorch PM also allegedly contains “goBHB ketones, calcium, sodium, and magnesium beta-hydroxybutyrate.” *See* www.ketoscorch.com/ketoscorch-pm.

7. The formulation of BHB in the Accused Products infringes at least representative claim 1 of the ’403 Patent and representative claim 1 of the ’362 Patent.

8. Plaintiff is a direct competitor of Defendants in the dietary supplements market and specifically for BHB and ketone supplements.

9. Plaintiff has suffered harm from Defendants’ unauthorized use of the goBHB® trademark in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff’s public perception and goodwill.

10. Plaintiff has suffered harm from Defendants falsely advertising that the Accused Products contain Plaintiff’s patented BHB formula in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff’s public perception and goodwill.

11. Plaintiff has suffered harm from Defendants’ infringement of the Asserted Patents in the form of lost profits.

12. Plaintiff’s immediate, irreparable injuries have no adequate remedy at law and Plaintiff is entitled to injunctive relief and up to three times its actual damages and/or an award of Defendants’ profits, as well as costs and reasonable attorney fees.

THE PARTIES

13. Plaintiff AGS is a Utah limited liability company with a principal place of business at 2157 Lincoln Street, Salt Lake City, UT 84106.

14. On information and belief, Defendant Viro is a Wyoming limited liability company with a registered mailing address at 30 N Gould St, Ste R, Sheridan, WY 82801 and a principal place of business in Lehi, UT, according to the terms, conditions, and privacy policies on its website as located at <https://ketoscorch.com/terms.html> and <https://ketoscorch.com/privacy.html>.

15. On information and belief, Defendant DeVore is a Utah resident who resides and owns real estate at 196 E Water Ln, Vineyard, UT 84059.

16. According to state business filings, Defendant DeVore is the owner and/or principal of Defendant Viro. Defendant DeVore is also the originator of several other business entities in Utah and elsewhere, including eSupplements LLC *dba* Nutricost (“Nutricost”). Plaintiff currently has a license agreement with Nutricost for the authorized sale of products bearing the goBHB® mark and containing ingredients covered by the Asserted Patents. Defendant DeVore is also the son of Steve DeVore, the originator of several business entities in Utah and elsewhere, including Ketond Nutrition LLC (“Ketond”). Plaintiff currently has a license agreement with Ketond for the authorized sale of products bearing the goBHB® mark and containing ingredients covered by the Asserted Patents.

17. On information and belief, Defendant DeVore knows of the license agreements between Plaintiff and Nutricost and between Plaintiff and Ketond and otherwise has knowledge of Plaintiff’s trademark and patent rights asserted in this action. Also on information and belief, Defendant DeVore uses Defendant Viro to obscure his identity and avoid paying royalties for a

license between Plaintiff and Defendants for the sale of the Accused Products. Also on information and belief, Defendant DeVore uses Defendant Viro in a fraudulent attempt to shield himself from liability for the infringements and other misconduct alleged herein. For at least the foregoing reasons, the Defendants are effectively the same entity for the purposes of the misconduct alleged herein.

JURISDICTION

18. This matter arises under the laws of the United States, including under the Lanham Act, 15 U.S.C. §§ 1114(a)-(b) and 1125(a)-(c), and under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.* Thus, the Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331. In addition, the Court has supplemental jurisdiction over Plaintiff's state claims for deceptive trade practices pursuant to 28 U.S.C. § 1367.

19. The Court has personal jurisdiction over Defendants, and venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b), at least because Defendants reside in this District, have a principal place of business in this District, and have committed a substantial portion of the infringements and other misdeeds giving rise to this action from within this District.

BACKGROUND

20. Plaintiff is a leader and innovator in the field of exogenous ketones and ketogenic precursor supplement products. These products aid the body in producing and sustaining elevated levels of ketone bodies in the blood and assist in the body's transition into nutritional ketosis. Plaintiff has patent rights in many unique formulations of BHB, including those claimed in the Asserted Patents.

21. Defendants make, use, advertise, offer for sale, and/or sell the Accused Products with a BHB formulation that infringes Plaintiff's exclusive rights in the Asserted Patents.

22. Plaintiff also sells and licenses products under the trademark goBHB® that contain the same formulation of goBHB® protected by the Asserted Patents. The goBHB® mark is widely known in the supplement, nutrition, and fitness industries.

23. In its advertising for the Accused Products, Defendants prominently and repeatedly falsely claims that the Accused Products contain goBHB®-branded ingredients and uses the goBHB® mark without authorization from Plaintiff:

WEIGHT LOSS WITH PATENTED goBHB™

SEE WHAT ketoSCORCH CAN DO FOR YOU!

ketoSCORCH Contains Clinically Proven Ingredients Meant To:

- ▶ Burn Fat As Fuel With Ketone Technology
- ▶ Made In a GMP Facility, In The USA
- ▶ 100% Money-Back Guarantee

SEE PRICING

www.ketoscorch.com



www.ketoscorch.com

www.ketoscorch.com/ketoscorch-pm



goBHB® aids in the transition to a ketogenic diet and is ideal for those who are in a ketogenic state. However, you do not have to be in a ketogenic state to benefit from goBHB®. Even those with low carbohydrate diets or those who are simply being conscientious of their nutrition can experience the benefits. It's an ideal fuel for cognition, performance, and weight management.

www.ketoscorch.com

www.ketoscorch.com/ketoscorch-pm

Patented goBHB™ For The Biggest Win!

Do a quick online search for 'keto diet pills' and of course, you'll find plenty. Here's the thing: **97% of ALL products don't contain the tested and proven version, which is goBHB™** and therefore providing random, cheap ratios that are definitely nowhere nearly as effective. You might wonder why these 'ratios' of bhb salts are important.

Think of it this way: If you're supposed to eat 2,000 calories each day, wouldn't it be important to eat plenty of protein & veggies? Yes, of course. Well, if you fill yourself up with 10% of the protein and veggies and then the other 90% with ice cream, then you're getting 1800 calories of garbage calories. This is the exact same thing with the cheap BHB versions. **ALWAYS STICK WITH GOBHB™!** Keep reading to learn more about all of the benefits of KetoSCORCH!

www.dietpillsexposed.com

Fuel For Everyday Life and Increased Performance

Ketone bodies include acetoacetate, acetone and beta-hydroxybutyrate (BHB) which facilitate mental and physical performance. goBHB® is a ketone body delivering an immediate boost of energy, performance, and satiety to athletes, busy professionals, "biohackers," and low-carb dieters looking for an edge.

www.ketoscorch.com

#3 KetoSCORCH - Full Strength Patented goBHB™ For Weight Loss

www.dietpillsexposed.com

#3) KetoSCORCH - Lose Weight With Patented goBHB™

www.supplementauditor.com/diet-pills/best-diet-pills/

KetoSCORCH breaks the idea of what a diet pill is or should be. Rather than adding any stimulants, KetoSCORCH provides you with **patented beta hydroxybutyrate, goBHB™**. It's a tried and true method of weight loss that is even used by special forces military to use fat for energy, rather than carbohydrates. It's efficient, it's powerful, and it's even a good price!

www.dietpillsexposed.com







KetoSCORCH contains the patented ingredient, goBHB™, which has been shown to **do the following**:

- ✓ Boost Mental & Physical Performance
- ✓ Non-Carbohydrate Pure Energy Source
- ✓ Lowers Ghrelin & Overall Appetite
- ✓ Stimulates "Metabolic Shift" Away From Glucose
- ✓ Proven To Be Safe



goBHB™ (ketone body called beta-hydroxybutyrate) – This is a breakthrough energy supplement, where the liver converts fats into ketones, which completely replace carbohydrates & glucose, which we all know to store fat if you don't use it as energy. **Ketones have shown to be far more effective for long-term energy levels** compared to glucose (carbs) for powering not only your body, but gives you a boost in brain function as well.


www.dietpillsexposed.com/ketoscorch

ketoSCORCH VS The Rest						
Contains goBHB™	YES	YES	NO	NO	NO	NO

www.ketoscorch.com

www.dietpillsexposed.com/ketoscorch/

www.supplementauditor.com/diet-pills/ketoscorch

ketoSCORCH PM™ VS The Rest		Competitor #1	Competitor #2	Competitor #3
goBHB™	YES	NO	NO	NO

www.ketoscorch.com/ketoscorch-pm

Here's what you get with ketoSCORCH: With every dose, you get the patented and clinically tested version of beta hydroxybutyrate, the **far superior goBHB™**. You'll also get exactly what's stated on the label - 800mg of ONLY goBHB™. Every order also comes with a 60 day money-back guarantee. Auto-Ship? ABSOLUTELY NOT! Avoid autoship scams, no matter how enticing their "free" intro offer might appeal to you. **If these are important aspects of purchasing a product, then ketoSCORCH is a clear winner.**

www.ketoscorch.com

Order KetoSCORCH With Patented goBHB™ - Supplies Limited

www.dietpillsexposed.com/ketoscorch/

KetoSCORCH PM helps you fall asleep quicker and stay asleep longer. It also helps your body to convert fat into energy by the power of goBHB™ and other powerful ingredients that help reduce the weight.

www.bestsleepaidreviews.com/ketoscorch-pm/

goBHB™

goBHB™ is a patented concentration of beta hydroxybutyrate, and is safe and proven to help people convert fat into energy. It's shown to help users lower their appetite.

- Stimulant free
- Safe & easy to consume in capsule form

www.bestsleepaidreviews.com/ketoscorch-pm/

Supplement Facts		
Serving Size: 2 Capsules		
Serving Per Container: 30		
	Amount Per Serving	% DV
Proprietary Ketosis Blend	800mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB), Calcium Beta-Hydroxybutyrate (as goBHB), Sodium Beta-Hydroxybutyrate (as goBHB)		
* Daily Value Not Established (DV)		

Other Ingredients: Gelatin (Capsule), Rice Flour, Magnesium Stearate, Silicon Dioxide and/or Microcrystalline Cellulose.

KetoScorch PM – Lose Weight With goBHB™ While You Sleep

www.bestsleepaidreviews.com

KetoSCORCH takes an ENTIRELY new approach to weight loss. How? It uses a very expensive patent called goBHB™. This incredible ingredient works by bypassing carbohydrates as energy and going straight for your fat to use as energy instead.

www.supplementauditor.com/diet-pills/best-diet-pills/

KetoScorch Ingredients:



This formula includes magnesium beta-hydroxybutyrate (as **goBHB**), calcium beta-hydroxybutyrate (as goBHB), and beta-hydroxybutyrate (as goBHB) sodium. goBHB is a patented form of exogenous ketones created by Compound Solutions. Exogenous ketones are ketones that are not produced in the liver and can be taken in supplements. The idea of KetoScorch is to speed up the process of getting your body into ketosis. Many benefits come with getting your body into ketosis including: **improved focus, increased energy, better mood, appetite suppression, and better sleep.**

www.supplementauditor.com/diet-pills/ketoscorch

✓ Stimulant-Free Formula That Uses goBHB Technology To Burn Fat As Fuel

www.supplementauditor.com/diet-pills/ketoscorch

What is KetoSCORCH? – KetoScorch is a weight loss supplement made to help your body burn fat more efficiently with the use of the patented and proven ingredient, goBHB™.

www.supplementauditor.com/diet-pills/ketoscorch

24. On information belief, Defendants have continuously advertised, offered for sale, sold, and/or imported the Accused Products since at least February 2019.

25. Plaintiff only learned of the infringements and other misconduct alleged herein after retaining outside counsel to investigate other, unrelated infringements of Plaintiff's trademarks.

26. Defendants' infringements and other tortious conduct alleged herein have injured Plaintiff. Plaintiff's immediate, irreparable injuries have no adequate remedy at law, and Plaintiff is entitled to injunctive relief and up to three times its actual damages and/or an award of Defendants' profits, as well as costs and reasonable attorney fees.

FIRST CLAIM FOR RELIEF

Trademark Infringement

15 U.S.C. §§ 1114(a)

27. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

28. Plaintiff owns all rights in the federally registered goBHB® trademark (U.S. Trademark Reg. No. 5261845). *See* Exhibit A.

29. Plaintiff is the owner of the goBHB® trademark by assignment.

30. Defendants use the goBHB® trademark on the Accused Products and their advertising, without authorization from Plaintiff:

WEIGHT LOSS WITH PATENTED goBHB™

SEE WHAT ketoSCORCH CAN DO FOR YOU!

ketoSCORCH Contains Clinically Proven Ingredients Meant To:

- ▶ Burn Fat As Fuel With Ketone Technology
- ▶ Made In a GMP Facility, In The USA
- ▶ 100% Money-Back Guarantee

SEE PRICING

www.ketoscorch.com



www.ketoscorch.com

www.ketoscorch.com/ketoscorch-pm



goBHB® aids in the transition to a ketogenic diet and is ideal for those who are in a ketogenic state. However, you do not have to be in a ketogenic state to benefit from goBHB®. Even those with low carbohydrate diets or those who are simply being conscientious of their nutrition can experience the benefits. It's an ideal fuel for cognition, performance, and weight management.

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Patented goBHB™ For The Biggest Win!

Do a quick online search for 'keto diet pills' and of course, you'll find plenty. Here's the thing: **97% of ALL products don't contain the tested and proven version, which is goBHB™** and therefore providing random, cheap ratios that are definitely nowhere nearly as effective. You might wonder why these 'ratios' of bhb salts are important.

Think of it this way: If you're supposed to eat 2,000 calories each day, wouldn't it be important to eat plenty of protein & veggies? Yes, of course. Well, if you fill yourself up with 10% of the protein and veggies and then the other 90% with ice cream, then you're getting 1800 calories of garbage calories. This is the exact same thing with the cheap BHB versions. **ALWAYS STICK WITH GOBHB™!** Keep reading to learn more about all of the benefits of KetoSCORCH!

www.dietpillsexposed.com

Fuel For Everyday Life and Increased Performance

Ketone bodies include acetoacetate, acetone and beta-hydroxybutyrate (BHB) which facilitate mental and physical performance. goBHB® is a ketone body delivering an immediate boost of energy, performance, and satiety to athletes, busy professionals, "biohackers," and low-carb dieters looking for an edge.

www.ketoscorch.com

#3 KetoSCORCH - Full Strength Patented goBHB™ For Weight Loss

www.dietpillsexposed.com

#3) KetoSCORCH - Lose Weight With Patented goBHB™

www.supplementauditor.com/diet-pills/best-diet-pills/

KetoSCORCH breaks the idea of what a diet pill is or should be. Rather than adding any stimulants, KetoSCORCH provides you with **patented beta hydroxybutyrate, goBHB™**. It's a tried and true method of weight loss that is even used by special forces military to use fat for energy, rather than carbohydrates. It's efficient, it's powerful, and it's even a good price!

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KetoSCORCH contains the patented ingredient, goBHB™, which has been shown to **do the following**:

- ✓ Boost Mental & Physical Performance
- ✓ Non-Carbohydrate Pure Energy Source
- ✓ Lowers Ghrelin & Overall Appetite
- ✓ Stimulates "Metabolic Shift" Away From Glucose
- ✓ Proven To Be Safe



goBHB™ (ketone body called beta-hydroxybutyrate) – This is a breakthrough energy supplement, where the liver converts fats into ketones, which completely replace carbohydrates & glucose, which we all know to store fat if you don't use it as energy. **Ketones have shown to be far more effective for long-term energy levels** compared to glucose (carbs) for powering not only your body, but gives you a boost in brain function as well.

www.dietpillsexposed.com/ketoscorch

<h1>ketoSCORCH VS The Rest</h1>						
	Contains goBHB™	YES	YES	NO	NO	NO

www.ketoscorch.com

www.dietpillsexposed.com/ketoscorch/

www.supplementauditor.com/diet-pills/ketoscorch

ketoSCORCH PM™ VS The Rest		Competitor #1			Competitor #2		Competitor #3	
		goBHB™	YES	NO	NO	NO	NO	NO

www.ketoscorch.com/ketoscorch-pm

Here's what you get with ketoSCORCH: With every dose, you get the patented and clinically tested version of beta hydroxybutyrate, the **far superior goBHB™**. You'll also get exactly what's stated on the label - 800mg of ONLY goBHB™. Every order also comes with a 60 day money-back guarantee. Auto-SHIP? ABSOLUTELY NOT! Avoid autoship scams, no matter how enticing their "free" intro offer might appeal to you. **If these are important aspects of purchasing a product, then ketoSCORCH is a clear winner.**

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KetoSCORCH PM helps you fall asleep quicker and stay asleep longer. It also helps your body to convert fat into energy by the power of goBHB™ and other powerful ingredients that help reduce the weight.

www.bestsleepaidreviews.com/ketoscorch-pm/

goBHB™

goBHB™ is a patented concentration of beta hydroxybutyrate, and is safe and proven to help people convert fat into energy. It's shown to help users lower their appetite.

- Stimulant free
- Safe & easy to consume in capsule form

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Supplement Facts		
Serving Size: 2 Capsules		
Serving Per Container: 30		
	Amount Per Serving	% DV
Proprietary Ketosis Blend	800mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB), Calcium Beta-Hydroxybutyrate (as goBHB), Sodium Beta-Hydroxybutyrate (as goBHB)		
* Daily Value Not Established (DV)		

Other Ingredients: Gelatin (Capsule), Rice Flour, Magnesium Stearate, Silicon Dioxide and/or Microcrystalline Cellulose.

KetoScorch PM – Lose Weight With goBHB™ While You Sleep

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KetoSCORCH takes an ENTIRELY new approach to weight loss. How? It uses a very expensive patent called goBHB™. This incredible ingredient works by bypassing carbohydrates as energy and going straight for your fat to use as energy instead.

www.supplementauditor.com/diet-pills/best-diet-pills/

KetoScorch Ingredients:



This formula includes magnesium beta-hydroxybutyrate (as **goBHB**), calcium beta-hydroxybutyrate (as goBHB), and beta-hydroxybutyrate (as goBHB) sodium. goBHB is a patented form of exogenous ketones created by Compound Solutions. Exogenous ketones are ketones that are not produced in the liver and can be taken in supplements. The idea of KetoScorch is to speed up the process of getting your body into ketosis. Many benefits come with getting your body into ketosis including: **improved focus, increased energy, better mood, appetite suppression, and better sleep.**

www.supplementauditor.com/diet-pills/ketoscorch

✓ Stimulant-Free Formula That Uses goBHB Technology To Burn Fat As Fuel

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What is KetoSCORCH? – KetoScorch is a weight loss supplement made to help your body burn fat more efficiently with the use of the patented and proven ingredient, goBHB™.

www.supplementauditor.com/diet-pills/ketoscorch

31. Defendants’ unauthorized use of the goBHB® mark is likely to confuse consumers, to cause mistake among consumers, and to deceive consumers into believing that the Accused Products contain Plaintiff’s branded ingredients, at least because Defendants use the goBHB® mark in exactly the same manner, and on the same kinds of products, as Plaintiff and its licensees, and because Plaintiff’s goBHB® mark is distinctive and famous in the health, wellness, and supplements industries.

32. Defendants’ trademark infringement is willful at least because Defendants (1) repeatedly use the full mark, exactly as registered, on its product label and advertising, (2) uses the mark for the precise class of goods for which it is registered (*see* Exhibit A (“nutritional or

dietary supplements in the nature of powder consisting of a beta hydroxybutyrate salt of either calcium, sodium, potassium or magnesium for use in food and dietary supplements to increase blood ketone levels”)), and (3) even use the trademark symbol (“TM”) and registration symbol (“®”), knowing that they do not have authorization from Plaintiff to use the registered trademark.

33. Plaintiff has suffered harm from Defendants’ unauthorized use of the goBHB® trademark in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff’s public perception and goodwill.

SECOND CLAIM FOR RELIEF
Unfair Competition
15 U.S.C. §§ 1125(a)

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37. Defendants use the goBHB® trademark on the Accused Products and their advertising, without authorization from Plaintiff:



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www.ketoscorch.com/ketoscorch-pm



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- ✓ **Lowers Ghrelin & Overall Appetite**
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- ✓ **Proven To Be Safe**



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www.dietpillsexposed.com/ketoscorch

ketoSCORCH VS The Rest						
Contains goBHB™		YES	YES	NO	NO	NO

www.ketoscorch.com

www.dietpillsexposed.com/ketoscorch/

www.supplementauditor.com/diet-pills/ketoscorch

ketoSCORCH PM [™] VS The Rest		Competitor #1	Competitor #2	Competitor #3
		NO	NO	NO
goBHB [™]	YES			

www.ketoscorch.com/ketoscorch-pm

Here's what you get with ketoSCORCH: With every dose, you get the patented and clinically tested version of beta hydroxybutyrate, the **far superior goBHB[™]**. You'll also get exactly what's stated on the label - 800mg of ONLY goBHB[™]. Every order also comes with a 60 day money-back guarantee. Auto-Ship? ABSOLUTELY NOT! Avoid autoship scams, no matter how enticing their "free" intro offer might appeal to you. **If these are important aspects of purchasing a product, then ketoSCORCH is a clear winner.**

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goBHB[™]

goBHB[™] is a patented concentration of beta hydroxybutyrate, and is safe and proven to help people convert fat into energy. It's shown to help users lower their appetite.

- Stimulant free
- Safe & easy to consume in capsule form

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Supplement Facts		
Serving Size: 2 Capsules Serving Per Container: 30		
	Amount Per Serving	% DV
Proprietary Ketosis Blend	800mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB), Calcium Beta-Hydroxybutyrate (as goBHB), Sodium Beta-Hydroxybutyrate (as goBHB)		
* Daily Value Not Established (DV)		

Other Ingredients: Gelatin (Capsule), Rice Flour, Magnesium Stearate, Silicon Dioxide and/or Microcrystalline Cellulose.

KetoScorch PM – Lose Weight With goBHB™ While You Sleep

www.bestsleepaidreviews.com

KetoSCORCH takes an ENTIRELY new approach to weight loss. How? It uses a very expensive patent called goBHB™. This incredible ingredient works by bypassing carbohydrates as energy and going straight for your fat to use as energy instead.

www.supplementauditor.com/diet-pills/best-diet-pills/

KetoScorch Ingredients:



This formula includes magnesium beta-hydroxybutyrate (as **goBHB**), calcium beta-hydroxybutyrate (as goBHB), and beta-hydroxybutyrate (as goBHB) sodium. goBHB is a patented form of exogenous ketones created by Compound Solutions. Exogenous ketones are ketones that are not produced in the liver and can be taken in supplements. The idea of KetoScorch is to speed up the process of getting your body into ketosis. Many benefits come with getting your body into ketosis including: **improved focus, increased energy, better mood, appetite suppression, and better sleep.**

www.supplementauditor.com/diet-pills/ketoscorch

✓ Stimulant-Free Formula That Uses goBHB Technology To Burn Fat As Fuel

www.supplementauditor.com/diet-pills/ketoscorch

What is KetoSCORCH? – KetoScorch is a weight loss supplement made to help your body burn fat more efficiently with the use of the patented and proven ingredient, goBHB™.

www.supplementauditor.com/diet-pills/ketoscorch

38. Defendants’ unauthorized use of the goBHB® mark is likely to confuse consumers, to cause mistake among consumers, and to deceive consumers into believing that the Accused Products contain Plaintiff’s branded ingredients, at least because Defendants use the goBHB® mark in exactly the same manner, and on the same kinds of products, as Plaintiff and its licensees, and because Plaintiff’s goBHB® mark is distinctive and famous in the health, wellness, and supplements industries.

39. Defendants’ unfair competition is willful at least because Defendants (1) repeatedly use the full mark, exactly as registered, on its product label and advertising, (2) uses the mark for the precise class of goods for which it is registered (*see* Exhibit A (“nutritional or dietary supplements in the nature of powder consisting of a beta hydroxybutyrate salt of either calcium, sodium, potassium or magnesium for use in food and dietary supplements to increase blood ketone levels”)), and (3) even use the trademark symbol (“TM”) and registration symbol (“®”), knowing that they do not have authorization from Plaintiff to use the registered trademark.

40. Plaintiff has suffered harm from Defendants’ unauthorized use of the goBHB® trademark in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff’s public perception and goodwill.

THIRD CLAIM FOR RELIEF

**False Advertising
15 U.S.C. § 1125(a)**

41. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

42. On information and belief, in addition to Defendants' website at www.ketoscorch.com, Defendants and/or their affiliates also maintain other websites, including at www.dietpillsexposed.com; www.dietpilldetective.com; www.consumerdietreviews.net; and www.bestsleepaidreviews.com (collectively, "False Websites").

43. Also on information and belief, the False Websites contain false product comparisons and other false advertisements in a fraudulent attempt to induce consumers to purchase KetoScorch, KetoScorchPM, and many other of Defendants' products (collectively, "Falsely Advertised Products").

44. The False Websites purport to rank the "Top Rated Diet Pills" and "Top Rated Sleep Aids" using "information we've compiled viewing thousands of different sites, comparing products, customer reviews, and label information." *See e.g.*, <https://dietpilldetective.com/>; <https://bestsleepaidreviews.com/>; <http://web.archive.org/web/20210921234732/https://dietpillsexposed.com/>; <https://consumerdietreviews.net/>.

45. On information and belief, in reality, Defendants did not engage in any such research and instead provide self-serving, false statements to promote only their own Falsely Advertised Products. Below are a few non-limiting examples:

- "This site is considered a 'buyer's guide' to diet pills. It's information we've compiled viewing thousands of different sites, comparing products, customer reviews, and label information." <http://web.archive.org/web/20210921234732/https://dietpillsexposed.com/>

- “After reviewing 1000’s of different products, the clear winner is Xentermine” <https://dietpilldetective.com/>
- “Somnafil has become increasingly popular over the last year or so. Once we heard about it, we kept getting emails asking for us to review it. We had to try it ourselves and put it to the test. Once we finished our week-long test, we could clearly see why Somnafil should definitely be considered when seeking out an effective, natural sleep aid.” <https://bestsleepaidreviews.com/somnafil/>
- “There are roughly 8,000 different diet pills on the market. Which one works? We’ve researched just about all of them” <https://dietpilldetective.com/>
- “Our list is updated on a weekly basis and our databases are on the lookout for any new products out there.” <https://bestsleepaidreviews.com/>
- “For over 13 years, we’ve been reviewing and testing all types of dietary supplements primarily sold online and trust us... We’ve seen everything.” <http://web.archive.org/web/20210921234732/https://dietpillsexposed.com/>

46. Defendants even provide false assurances to consumers that their reviews for the

Falsely Advertised Products are impartial and genuine:

- “We write truthfully and give our honest review of every product we list on DietPillDetective.” <https://dietpilldetective.com/>
- “What we’re not going to do is trick you into buying a product only a single time, only to hate us and the product.” <http://web.archive.org/web/20210921234732/https://dietpillsexposed.com/>
- “We want you to trust us and come back for many purchases in the future based on the information we provide.” <http://web.archive.org/web/20210921234732/https://dietpillsexposed.com/>

47. On information and belief, all of the products ranked on the False Websites are Defendants’ products.

48. Also on information and belief, the False Websites include fake product reviews, fake testimonials, and fake before and after photographs. For example, the following reviews

were found on different websites associated with Defendants, and include different photographs, for different Falsely Advertised Products, but for identical reviews and testimonials:

Down 53 pounds and counting



No babies in my life... Just divorce and depression and A LOT of food. I seriously gained 50 pounds over the course of 2 years and I was absolutely miserable. I didn't want to go out any more since none of my clothes fit me. I was down to sweats in my closet and I didn't want to wear sweats unless I'm home. So, going out with friends was out of the question.

Ari – October 23

<https://dietpilldetective.com/oxiphex/>



★★★★★

Down 96 pounds and counting

3 babies in my life... Just divorced, depression and A LOT of food. I seriously gained almost 100 pounds over the course of 3 years and I was absolutely miserable. I didn't want to go out any more since none of my clothes fit me. I was down to oversized dresses and sweats in my closet and I didn't want to wear sweats unless I'm home. So, I never wen out with friends.

- Cassi Austin

<https://slimfitx.com/>

Rating: 4.5 ★★★★★

I buying xentermine diet pill and it helps me to lose fat very fast. I am buying again very soon to keep fat low.

✓ Verified Purchase - Luciana, 25

"I buying Exipure diet pill and it help me to lose fat very fast. I am buying again very soon to keep fat low. Thank you!"

Estelle G. - Florida, USA

<https://dietpillsexposed.com/xentermine/>

<https://www.exipurestry.com/>



YES, YES, YES! I'M SO HAPPY I'M CRYING



No, ketoscorch didn't give me my new body, because I worked my freaking butt off!!!! But, I've been working out and eating so clean forever but started becoming at a standstill for 2.5-3 months without ANY progress whatsoever. My uncle is a nutrition guy and basically lives in the gym. He actually told me about using a ketone diet pill to switch things up and I can't believe that it actually helped as much as it did. I wish it had caffeine in it, but I definitely took this product in the evening a lot too, so maybe it would be better if they had a couple of versions. Otherwise, definitely 4.5 / 5 stars.

Crystal - April, 27

<https://dietpilldetective.com/ketoscorch/>

"YES, YES, YES!"

I'M SO HAPPY I'M CRYING.

MacroLean didn't give me my new body, because I worked my freaking butt off!!!! But, I've been working out and eating so clean forever but started becoming at a standstill for 2.5-3 months without ANY progress whatsoever. I wish it had caffeine in it, but I definitely took this product in the evening a lot too, so maybe it would be better if they had a couple of versions.



Cindy



<https://macrolean.com/>

49. Defendants' False Websites are a complex web of false advertising created with the intent to deceive consumers and fraudulently induce them to purchase Defendants' products.

50. Plaintiff competes directly with Defendants in the fields of ketogenic, diet, and weight loss supplements.

51. Plaintiff has suffered harmed from Defendants' unfair competition in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill, for at least the following Falsely Advertised Products: Xentermine, OxiPHEX, KetoScorch, Garcinia, PhenGold, Capsiplex, Nuratrim, Meratol, Best Factor Max, Somnafil, Ultra Sleep Complex, CarboFix, Exipure, Proactol XS, SlimFix, Macrolean, Somnafil, KetoScorch PM, Z-SlimPM. Discovery will likely reveal additional False Websites, additional products that Defendants falsely advertised, and additional harm suffered by Plaintiff.

FOURTH CLAIM FOR RELIEF
Patent Infringement, '403 Patent
35 U.S.C. §§ 1, *et seq.*

52. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

53. Plaintiff owns all rights in the '403 Patent.

54. The '403 Patent is valid, enforceable, and was issued in full compliance of the patent laws of the United States.

55. Plaintiff and its licensees have marked their products in accordance with 35 U.S.C. § 287(a).

56. Without license or authorization, Defendants make, use, offer for sale, sell, and/or import the Accused Products containing compounds that infringe the '403 Patent.

57. On February 8, 2022, the '403 Patent, titled "Beta-hydroxybutyrate mixed salt compositions and methods of use" was duly and legally issued. A true and correct copy of the '403 Patent is attached as Exhibit B.

58. Defendants make, use, offer for sale, sell, import, and/or distribute the Accused Products, which practice the invention of at least representative claim 1 of the '403 Patent, without authorization from Plaintiff.

59. The Accused Products infringe at least claim 1 of the '403 Patent in the manner described below:

1. A composition for increasing ketone level in a subject, comprising:

a plurality of beta-hydroxybutyrate salts comprised of:
at least one beta-hydroxybutyrate salt selected from:
calcium beta-hydroxybutyrate; and
magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:
 sodium beta-hydroxybutyrate;
 potassium beta-hydroxybutyrate;
 calcium beta-hydroxybutyrate;
 magnesium beta-hydroxybutyrate; and
 amino acid salts of beta-hydroxybutyrate,

wherein the beta-hydroxybutyrate salts comprise at least 20% by total weight of calcium beta-hydroxybutyrate and/or magnesium beta-hydroxybutyrate,

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

Here's where KetoScorch comes in: Taking the patented version of betahydroxybuterate (goBHB™), will allow you to achieve ketosis at an accelerated rate and start burning fat as fuel, rather than rely on carbohydrates for energy.

www.ketoscorch.com

Supplement Facts		
Serving Size: 2 Capsules Serving Per Container: 30		
	Amount Per Serving	% DV
Proprietary Ketosis Blend	800mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB), Calcium Beta-Hydroxybutyrate (as goBHB), Sodium Beta-Hydroxybutyrate (as goBHB)		
* Daily Value Not Established (DV)		

Other Ingredients: Gelatin (Capsule), Rice Flour, Magnesium Stearate, Silicon Dioxide and/or Microcrystalline Cellulose.

www.dietpillsexposed.com/ketoscorch/

Supplement Facts

Serving Size: 2 Capsules
Serving Per Container: 30

	Amount Per Serving	% DV
Proprietary Ketosis Blend	800mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB), Calcium Beta-Hydroxybutyrate (as goBHB), Sodium Beta-Hydroxybutyrate (as goBHB)		

* Daily Value Not Established (DV)

Other Ingredients: Gelatin (Capsule), Rice Flour, Magnesium Stearate, Silicon Dioxide and/or Microcrystalline Cellulose.

www.dietpillsexposed.com/ketoscorch/

Supplement Facts

Serving Size: 2 Capsules
Serving Per Container: 30

	Amount Per Serving	% DV
Proprietary Ketosis Blend	800mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB), Calcium Beta-Hydroxybutyrate (as goBHB), Sodium Beta-Hydroxybutyrate (as goBHB)		

* Daily Value Not Established (DV)

Other Ingredients: Gelatin (Capsule), Rice Flour, Magnesium Stearate, Silicon Dioxide and/or Microcrystalline Cellulose.

(Based on the full list of ingredients, KetoScorch is sold as encapsulated powder.)

www.dietpillsexposed.com/ketoscorch/

Supplement Facts		
Serving Size: 2 Capsules Serving Per Container: 30		
	Amount Per Serving	% DV
Proprietary Ketosis Blend	800mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB), Calcium Beta-Hydroxybutyrate (as goBHB), Sodium Beta-Hydroxybutyrate (as goBHB)		
* Daily Value Not Established (DV)		
Other Ingredients: Gelatin (Capsule), Rice Flour, Magnesium Stearate, Silicon Dioxide and/or Microcrystalline Cellulose.		

www.dietpillsexposed.com/ketoscorch/

60. Defendants do not list the full ingredient quantities for KetoScorch PM, but, on information and belief, it contains the same formulation of BHB as the original KetoScorch product, is also sold as an encapsulated powder, and also does not contain any medium-chain fatty acids. See www.ketoscorch.com/ketoscorch-pm (KetoScorch PM “help[s] get the body into ketosis” and contains “goBHB ketones, calcium, sodium, and magnesium beta-hydroxybutyrate,” “Melatonin,” “L-Theanine,” “Ginkgo Biloba,” “White Kidney Bean Extract,” and “also includes vitamin D, magnesium glycinate chelate, and chromium”).

61. Defendants have directly infringed at least claim 1 of the '403 Patent in the United States by making, using, offering for sale, selling, and/or importing the Accused Products in violation of 35 U.S.C. § 271(a). As such, Defendants are liable for infringement of the '403 Patent under 35 U.S.C. § 271(a).

62. Defendants have indirectly infringed the '403 Patent in this District and elsewhere in the United States by inducing others to make, use, offer for sale, and/or sell the Accused Products in violation of 35 U.S.C. § 271(b).

63. Defendants' infringement of the '403 Patent is knowing and willful and this case is exceptional, as evidenced by the fact that Defendants expressly acknowledge that the Accused Products contain patented goBHB® ingredients (*see e.g.*, www.ketoscorch.com ("Here's what you get with ketoSCORCH: With every dose, you get the patented and clinically tested version of beta hydroxybutyrate, the far superior goBHB™"; www.bestsleepaidreviews.com/ketoscorch-pm/ ("KetoSCORCH PM . . . helps your body to convert fat into energy by the power of goBHB™" and "goBHB™ is a patented concentration of beta hydroxybutyrate"))) and because Defendants use the precise, patented formula of BHB protected by the '403 Patent.

64. Plaintiff has suffered harm as a result of Defendants' infringement of the '403 Patent, including in the form of lost profits and diverted sales and market share. Plaintiff is therefore entitled to recover damages sustained as a result of Defendants' wrongful acts in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF
Patent Infringement, '362 Patent
35 U.S.C. §§ 1, *et seq.*

65. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

66. Plaintiff owns all rights in the '362 Patent.

67. The '362 Patent is valid, enforceable, and was issued in full compliance of the patent laws of the United States.

68. Plaintiff and its licensees have marked their products in accordance with 35 U.S.C. § 287(a).

69. Without license or authorization, Defendants make, use, offer for sale, sell, and/or import the Accused Products containing compounds that infringe the '362 Patent.

70. On June 1, 2021, the '362 Patent, titled "Beta-hydroxybutyrate mixed salt compositions and methods of use" was duly and legally issued. A true and correct copy of the '362 Patent is attached as Exhibit C.

71. Defendants make, use, offer for sale, sell, import, and/or distribute the Accused Products, which practice the invention of at least representative claim 1 of the '362 Patent, without authorization from Plaintiff.

72. The Accused Products infringe at least claim 1 of the '362 Patent in the manner described below:

1. A composition for increasing ketone level in a subject, comprising:

at least three beta-hydroxybutyrate salts selected from:
sodium beta-hydroxybutyrate;
potassium beta-hydroxybutyrate;
calcium beta-hydroxybutyrate; and
magnesium beta-hydroxybutyrate;

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

Here's where KetoScorch comes in: Taking the patented version of betahydroxybuterate (goBHB™), will allow you to achieve ketosis at an accelerated rate and start burning fat as fuel, rather than rely on carbohydrates for energy.

www.ketoscorch.com

Supplement Facts		
Serving Size: 2 Capsules Serving Per Container: 30		
	Amount Per Serving	% DV
Proprietary Ketosis Blend	800mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB), Calcium Beta-Hydroxybutyrate (as goBHB), Sodium Beta-Hydroxybutyrate (as goBHB)		
* Daily Value Not Established (DV)		

Other Ingredients: Gelatin (Capsule), Rice Flour, Magnesium Stearate, Silicon Dioxide and/or Microcrystalline Cellulose.

www.dietpillsexposed.com/ketoscorch/

Supplement Facts		
Serving Size: 2 Capsules Serving Per Container: 30		
	Amount Per Serving	% DV
Proprietary Ketosis Blend	800mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB), Calcium Beta-Hydroxybutyrate (as goBHB), Sodium Beta-Hydroxybutyrate (as goBHB)		
* Daily Value Not Established (DV)		

Other Ingredients: Gelatin (Capsule), Rice Flour, Magnesium Stearate, Silicon Dioxide and/or Microcrystalline Cellulose.

(Based on the full list of ingredients, KetoScorch is sold as encapsulated powder.)

www.dietpillsexposed.com/ketoscorch/

Supplement Facts		
Serving Size: 2 Capsules Serving Per Container: 30		
	Amount Per Serving	% DV
Proprietary Ketosis Blend	800mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB), Calcium Beta-Hydroxybutyrate (as goBHB), Sodium Beta-Hydroxybutyrate (as goBHB)		
* Daily Value Not Established (DV)		
Other Ingredients: Gelatin (Capsule), Rice Flour, Magnesium Stearate, Silicon Dioxide and/or Microcrystalline Cellulose.		

www.dietpillsexposed.com/ketoscorch/

73. Defendants do not list the full ingredient quantities for KetoScorch PM, but, on information and belief, it contains the same formulation of BHB as the original KetoScorch product, is also sold as an encapsulated powder, and also does not contain any medium-chain fatty acids. See www.ketoscorch.com/ketoscorch-pm (KetoScorch PM “help[s] get the body into ketosis” and contains “goBHB ketones, calcium, sodium, and magnesium beta-hydroxybutyrate,” “Melatonin,” “L-Theanine,” “Ginkgo Biloba,” “White Kidney Bean Extract,” and “also includes vitamin D, magnesium glycinate chelate, and chromium”).

74. Defendants have directly infringed claim 1 of the '362 Patent in the United States by making, using, offering for sale, selling, and/or importing the Accused Products in violation of 35 U.S.C. § 271(a). As such, Defendants are liable for infringement of the '362 Patent under 35 U.S.C. § 271(a).

75. Defendants have indirectly infringed the '362 Patent in this District and elsewhere in the United States by inducing others to make, use, offer for sale, and/or sell the Accused Products in violation of 35 U.S.C. § 271(b).

76. Defendants' infringement of the '362 Patent is knowing and willful and this case is exceptional, as evidenced by the fact that Defendants expressly acknowledge that the Accused Products contain patented goBHB® ingredients (*see e.g.*, www.ketoscorch.com ("Here's what you get with ketoSCORCH: With every dose, you get the patented and clinically tested version of beta hydroxybutyrate, the far superior goBHB™"; www.bestsleepaidreviews.com/ketoscorch-pm/ ("KetoSCORCH PM . . . helps your body to convert fat into energy by the power of goBHB™" and "goBHB™ is a patented concentration of beta hydroxybutyrate"))) and because Defendants use the precise, patented formula of BHB protected by the '362 Patent.

77. Plaintiff has suffered harm as a result of Defendants' infringement of the '362 Patent, including in the form of lost profits and diverted sales and market share. Plaintiff is therefore entitled to recover damages sustained as a result of Defendants' wrongful acts in an amount to be proven at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays that the Court enter judgment in its favor and award the following relief against Defendants:

- A. A judgment that Defendants infringed the Asserted Patents directly and indirectly by inducement;
- B. A judgment that Defendants infringed Plaintiff's rights in the goBHB® mark;
- C. A judgment that Defendants falsely advertised the Accused Products;

- D. A judgment that Defendants committed deceptive trade practices;
- E. A finding that the Defendants' conduct alleged herein was willful and that this case is exceptional;
- F. An order and judgment enjoining Defendants and their officers, directors, employees, agents, licensees, representatives, affiliates, related companies, servants, successors and assigns, and any and all persons acting in privity or in concert with any of them, from infringing Plaintiff's patents or trademarks or from falsely advertising any products;
- G. An award of actual damages in an amount to be determined at trial for patent infringement, trademark infringement, false advertising, and unfair and deceptive trade practices.
- H. Disgorgement of Defendants' profits associated with Defendants' trademark infringement, false advertising, and unfair competition;
- I. Plaintiff's costs and attorneys' fees;
- J. A judgment for treble damages and other punitive damages;
- K. An order and judgment for Defendants to promulgate corrective advertising by the same media and with the same distribution and frequency as the false advertising for the Accused Products;
- L. Any such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial on all matters triable to a jury.

DATED: July 25, 2023.

WORKMAN NYDEGGER

By: /s/ Brian N. Platt

Brian N. Platt

Collin D. Hansen (*pro hac vice forthcoming*)

Counsel for Plaintiff Axxess Global Sciences, LLC